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FEDERAL COMMUNICATIONS COMMISSION
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
) **RM-9405**
Establishment of a Public Service Radio)
Pool in the Private Mobile Frequencies)
Below 800 MHz)

To: The Commission

**REPLY OF MINNESOTA POWER TO STATEMENTS REGARDING
PETITION FOR RULEMAKING**

Minnesota Power, through its undersigned counsel and pursuant to Section 1.405(b) of the Rules and Regulations of the Federal Communications Commission ("FCC"), 47 C.F.R. §1.405(b), hereby submits this Reply to Statements filed in Support of or in Opposition to the Petition for Rulemaking filed with the Commission on August 14, 1998 by UTC, the Telecommunications Association, the American Petroleum Institute, and the Association of American Railroads.¹

Introduction

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Minnesota Power is one of the state's largest utilities, providing electric service to more than 140,000 customers. Minnesota Power's service territory is concentrated in the northeastern portion of the State near Lake Superior, but also extends from northwestern Wisconsin across a

¹ This Petition appeared on a Commission Public Notice dated November 23, 1998, Report No. 2306, mimeo 90739.

portion of the northern tier along the Canadian border to include portions of northwestern Minnesota. The company has responsibility for approximately 8,200 miles of transmission and distribution lines. Minnesota Power's service territory covers more than 26,000 square miles, including areas that are always severely impacted by winter's climate, as well as by storms that hit Lake Superior, the largest of the Great Lakes. Minnesota Power operates a number of private land mobile radio systems in the frequency bands below 800 MHz to provide mobile communications in support of the company's electric utility operations.

Due to the wide geographic area served, Minnesota Power has relied on UHF and VHF frequencies to provide adequate coverage. The company is authorized for approximately fifty licenses in the 450 MHz range, approximately 13 in the VHF (150-174 MHz band) range, and approximately six in the 48 MHz range. To some extent, this choice of below 800 MHz assignments is driven by the propagation characteristics of these channels. However, one important consideration behind the choice of below 800 MHz frequencies is the lack of 800 MHz Industrial/Land Transportation channels due to their use in commercial systems that obtained such frequencies through intercategory sharing in the early 1990s. Minnesota Power is thus vitally interested in Commission action on the above-captioned petition for rulemaking, which, if implemented, would provide a dedicated spectrum home in the bands below 800 MHz for critical mobile communications operations undertaken by electric utilities. The petition would further institute, for the first time, protected service contours for utility operations in the bands below 800 MHz.

Discussion

Establishment of a Public Service Radio pool by the Commission would be in the public interest and would permit the FCC to remedy deficiencies in the current coordination framework

that place critical mobile communications in jeopardy of interference from the operations of other Part 90 eligibles. Minnesota Power's responsibilities to provide electric power to wide regions across northern Minnesota and northwestern Wisconsin, and its experience with employing land mobile radio systems operating in the bands below 800 MHz to coordinate these activities, make the company well-qualified to provide support to the petition, especially as it proposes to include power utilities in the Public Service Radio pool.

Those parties that oppose the Petition generally take the position that all private land mobile radio operations are important, and thus no segment of the private land mobile community is entitled to a spectrum set-aside under the current land mobile regulatory framework. While all private services are important, and all private services have unique reliability and control requirements that may not be capable of being met by commercial carriers, the fact remains that mobile communications operations conducted by utilities, pipelines and railroads must be afforded a higher level of protection. Commencement of a rulemaking proceeding to establish a Public Service Radio pool would provide a level of recognition and protection that is appropriate and due these "critical infrastructure industries."

The Personal Communications Industry Association (PCIA) and the Industrial Telecommunications Association (ITA) note the general safety requirements facilitated by the mobile radio operations of eligibles in the Industrial/Business pool. Power utilities such as Minnesota Power provide the core resource that permits modern society to function. Absent electric power, other industrial and business operations simply cannot be performed. For the population as a whole, utilities have responsibility for providing electric power to hospitals and

other critical facilities throughout their service territories, while simultaneously assuring the safety of their crews working on distribution lines carrying 46,000 volts of electricity. While safety is a concern for all Part 90 eligibles, power utilities and other critical infrastructure industries have demonstrably more crucial requirements for reliable, interference-free communications in order to serve the population at large, as well as safeguard the lives of their workers.

The existing Part 90 spectrum framework does not recognize these crucial differences – power utilities and other critical infrastructure industries are members of the Industrial/Business category, which includes private carriers offering Part 20 commercial service in the bands below 800 MHz. The fact is that under the current rules as developed by the Commission’s Refarming proceeding, other Industrial/Business entities have access to channels upon which crucial mobile radio operations are conducted by power utilities.

Minnesota Power favorably notes that ITA expressed support for mandatory protected service contours for the power, petroleum and railroad services. In the 450-512 MHz band, these contours would prohibit the 21 dBu contour of a proposed station from interfering with the 39 dBu contour of the incumbent system. As the petition notes, adopting protected service contours would best protect existing stations in the critical infrastructure industries. As the petition also observes, however, the best level of protection for new facilities that may need to be authorized and constructed would be through the creation of a Public Service Radio pool.

Minnesota Power wishes to oppose the position taken by the American Mobile Telecommunications Association (AMTA) asserting the feasibility of shared access by

commercial trunked systems on channels below 800 MHz employed by critical infrastructure industries. First, due to wide-area coverage requirements and reliability concerns, use of commercial trunked systems in the bands below 800 MHz is not feasible for power utilities. Second, the absence of protected service contours for critical infrastructure industries employing standard base-mobile configurations places these stations in particular danger of interference from trunked commercial systems that may be authorized on co-channel or adjacent channel frequencies.

The seriousness of these concerns has been reflected by several members of the U.S. House of Representatives, who have written Chairman Kennard asking that long-term action be implemented to prevent interference to critical utility operations. Adoption of a Notice of Proposed Rule Making seeking the creation of a Public Service Radio pool would be the quickest most effective way for the Commission to meet this important goal. The petition itself is quite comprehensive, citing specific frequencies and offering detailed rules for the new pool. It presents a “stand-alone” framework for rapid Commission implementation.

Conclusion

Minnesota Power urges the Commission to reject the arguments of those parties that seek to characterize all private land mobile operations as indistinguishable. The requirements of the critical infrastructure industries for a Public Service Radio pool are intuitive and compelling. The Commission should quickly adopt a Notice of Proposed Rule Making incorporating the proposed rule provisions advanced by the above-captioned petition.

WHEREFORE, THE PREMISES CONSIDERED, Minnesota Power requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

MINNESOTA POWER

By: Carole C. Harris /ums

Carole C. Harris
McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005
(202) 756-8281

Its Attorney

Dated: January 7, 1999

Certificate of Service

I, Constance Maisel, a secretary at the law firm McDermott, Will & Emery, do hereby certify that I have mailed copies of the foregoing Reply in regard to RM-9405 to:

Alan R. Shark, President
American Mobile Telecommunications Assoc., Inc.
1150 18th Street, N.W. – Suite 250
Washington, D.C. 20036


Elizabeth R. Sachs, Esq.
Lukas, Nace, Gutierrez & Sachs
1111 19th Street, N.W. – Suite 1200
Washington, D.C. 20036

Industrial Telecommunications Association, Inc.
1110 North Glebe Road – Suite 500
Arlington, Virginia 22201

Mary McDermott, Senior V.P.
Chief of Staff, Government Relations
Personal Communications Industry Association
500 Montgomery Street – Suite 700
Alexandria, Virginia 22314

Alan S. Tilles, Esq.
Shulman, Rogers, Gandal, Pordy & Ecker, P.A.
11921 Rockville Pike, Third Floor
Rockville, Maryland 20852-2743

by first class mail, postage prepaid, this 7th day of January, 1999.


Constance Maisel